IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

Crl.MC.No. 609 of 2007()

CC.236/2006 of J.F.C.M-I, PERINTHALMANNA

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PETITIONER: ACCUSED

KUNJIMOIDEEN, S/O.ALAVIKUTTY,
KOLLACHIALAL HOUSE, ARAKKAPARAMBU P.O.,
MALAPPURAM DISTRICT.

BY ADV. SRI.DILIP MOHAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/03/2007, THE COURT ON STHE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.609 of 2007

Dated this the 6th day of March, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the N.I Act. Cognizance was taken by the learned Magistrate. According to the petitioner, he has not received any summons. But even before summons was served on him, the learned Magistrate has chosen to issue a non bailable warrant of arrest against the petitioner to procure the presence of the petitioner. The petitioner is willing to surrender before the learned Magistrate. But the petitioner apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. The petitioner, in these circumstances, prays that directions under Section 482 Cr.P.C may be issued to the learned Magistrate to release him on bail on the date of surrender itself.

2. I find no reason to invoke the powers under Section 482 Cr.P.C. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be

necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

3. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

4. The learned counsel for the petitioner submits that the petitioner is now employed at Calcutta and if personal presence of the petitioner were insisted on all dates of posting, it would cause great hardship and loss to the petitioner. I find no reason to assume that the learned Magistrate would insist on such personal presence of the petitioner on all dates of posting. It has often been repeated that the personal presence of the accused is not to be insisted in a case like the instant one and need be insisted if such presence be essential for the proper further progress of the case. The petitioner can, of course, apply for exemption. The learned Magistrate shall pass appropriate order on that application.

H/O.

(R.BASANT, JUDGE)

rtr/-